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Joint written statement* submitted by the France Libertes : Fondation Danielle Mitterrand, American Association of Jurists, Emmaus International Association, Peace Brigades International Switzerland, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Violation of the human right to water and sanitation in Latin America: a consequence of policies extractive activities

« Water is a limited natural resource and a public good fundamental for life and health. »[1] In its General comment No.15 in 2002, the Committee for economic, social and cultural rights emphasizes the importance of water to humans. It considers it as a fundamental right, since the right to water and sanitation is implicitly recognized in articles 11 and 12 of the International Covenant on economic, social and cultural right (right to an adequate standard of living and right to the enjoyment of the highest attainable standard of physical and mental health). In the same General comment, the Committee defines the human right to water as *«sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses»*[2]. The General Assembly of the United Nations confirmed the right to water and sanitation as a fundamental right in a resolution 64/292[3] adopted on the 28th of July 2010 and reiterated by the Human Rights Council in 2013[4]. For France Libertés, this right is particularly invaluable since *«it is a prerequisite for the realization of other human rights»*[5].

Many governments make the choice to intensively extract natural resources in order to satisfy our societies' increasing needs as it has a veritable economic appeal. This trend, also called *extractivism* by France Libertés, produces major violations of the human right to water and sanitation in territories affected by extractive projects. Such economic and political choices place priority in economic growth over fundamental human rights and as such need to be questioned.

Businesses are accelerating their exploitation of mineral resources, in order to face up to increasing demand. With the growing scarcity and depletion of natural resources, businesses have to diversify their zones of exploitation but also their techniques. In this struggle for raw materials, Latin American countries are not an exception and they bear the cost of extreme and expensive methods, also known as non-conventional, such as fracking. In December 2013, Mexico decided to put an end to seventy-five years of state energy monopoly on natural resource exploitation to open the sector to new extractive projects based on non-conventional methods. This leads inevitably to intensive water use, with serious consequences for local communities' fundamental right to water: contaminated surface and ground water rendering it non-potable, increased water stress, competition between different water uses, serious health issues such as poisoning, skin diseases and malformations. In 2011, the Special Rapporteur on the rights of indigenous peoples related some of those effects: *« With respect to the negative impact of extractive operations on water resources, it was noted that water resource depletion and contamination has had harmful effects on available water for drinking, farming and grazing cattle, and has affected traditional fishing and other activities, particularly in fragile natural habitats. »*[6]

In Mexico (in Sierra Norte de Puebla region), in Guatemala (Petén region) and in Honduras, concessions to extractive industries have been awarded in extensive areas. In these countries, local communities have difficulties in expressing their concerns. They are either completely absent in decision making processes or only involved in late stages, the dialogue remaining between the State and businesses. Priority is given to financial issues around natural resource extraction and override citizens' participation in decision making. This goes against the idea that *« participation in the conduct of public affairs, including access to the necessary information, is itself a human right that must be respected and implemented in the formulation of national action plans, as in all other spheres of government action »*[7] related in the Report of the Working Group on the issue of human rights and transnational corporations. With their rights to

[1] Committee on economic, social and cultural rights, General Comment No. 15 (2002), E/C.12/2002/11, 20 january 2003, p.1 §1
[2] *Ibid*, p.2 §2
[3] A/RES/64/292, 3 august 2010
[4] A/C.3/68/L.34/Rev.1, 19 november 2013
[5] Committee on economic, social and cultural rights, General Comment No. 15 (2002), E/C.12/2002/11, 20 january 2003, p.1 §1
[6] Report of the Special Rapporteur on the rights of indigenous pepoles, James Anaya, Extractive industries operating within or near indigenous territories, A/HRC/18/35, 11 july 2011, p.9 §31
[7] Report of the Working Group on the issue of human rights and transnational corporations, 5 august 2014, A/69/263, p.6 §15

information and prior consultation flouted, communities tend to take a long time to find out the effects produced by natural resources exploitation on the full enjoyment of their right to water. In Latin America, many civil society organizations get together to mobilise around the harm done to their environment and to defend their fundamental rights in States where governments is in collusion with businesses the extractive industries. We denounce the devastating effects of extractivism, which are worsened by an increasing criminalization of social movements protesting about large-scale industrial projects

Concerned by such extensive violations of the fundamental right to safe water and sanitation in territories affected by extractive industries and troubled by the non-respect of the principle of local communities' free, prior and informed consent concerning large-scale industrial projects, France Libertés aims to alert the international community about this situation.

Recommendations

- We invite States that are not yet Parties to the International Covenant on Economic, Social and Cultural Rights to sign and ratify the Covenant;

- We remind the States that are signatories to the International Covenant on Economic, Social and Cultural Rights of their duty to implement into national law, the fundamental right to water as specified by the Committee on Economic, Social and Cultural Rights, the Council of human Rights and the UN General Assembly;

- We call upon the States Parties to the International Covenant on Economic, Social and Cultural Rights to ratify the Additional Protocol to the Covenant in order to fully ensure the effectiveness of established rights;

- We invite States to grant constitutional status to the right to water;

- We emphasize the need of prior information to populations affected by extractive projects, as well as consultation in good faith, in order to fully integrate them in the decision-making process, as provided by the Convention No. 169 of the International Labour Organization and the United Nations Declaration on the rights of indigenous peoples;

- We call on States to reconsider the funding policies of international financial institutions in the implementation of extractive projects affecting the right to water for all;

- We reiterate the need to fight against corruption, public authority collusion with the extractive industry as well as the criminalization of social movements.

Our organizations call upon the:

- Special Rapporteur on the right to water and sanitation to urge for respect of the human right to water as provided by Articles 11 and 12 of the International Covenant on Economic Social and Cultural Rights;
- Special Rapporteur on the rights of indigenous peoples to urge for respect of the right to self-government and the principle of consent as provided by Articles 4, 10 and 19 of the UN Declaration on the Rights of Indigenous Peoples;

As well as upon the:

- Special Rapporteur on the situation of human rights defenders;
- Special Rapporteur on the right to peaceful assembly and freedom of association;
- Working Group on human rights and transnational corporations and other business enterprises;
- UN Inter-agency Group for preventive actions.

to pay special attention to the implementation of the human right to water in the context of extractive activities, especially in Mexico, Guatemala and Honduras, where particularly current and alarming violations are occurring.